TAN SIEW SEN & ORS v.
NICK ABU DUSUKI HJ ABU HASSAN & ANOR

COURT OF APPEAL, PUTRAJAYA
MOHD ZAWAWI SALLEH JCA
VERNON ONG LAM KIAT JCA
ABDUL RAHMAN SEBLI JCA
[CIVIL APPEAL NO: B-04-249-09-2014]
13 MAY 2016

CIVIL LAW ACT: *Dependency claim – Fatal accident – Loss of support – Whether claimant was lawful wife of deceased – Civil Law Act 1956, s. 7(2) – Non-registration of customary marriage – Whether marriage null and void – Whether dependency claim affected – Law Reform (Marriage and Divorce) Act 1976, ss. 5(4), 22(4)*

DAMAGES: *Fatal accident – Dependency claim – Loss of support – Whether claimant was lawful wife of deceased – Civil Law Act 1956, s. 7(2) – Non-registration of customary marriage – Whether marriage null and void – Whether dependency claim affected – Law Reform (Marriage and Divorce) Act 1976, ss. 5(4), 22(4)*

CIVIL PROCEDURE: *Appeal – Dependency claim – Loss of support – Whether claimant dependent on deceased persons for living prior to fatal accident – Factual findings of trial judge – Interference by appellate court – Whether warranted*

The deceased persons, one Low Sai Tiam and one Low Chin Wee, who were father and son respectively, were tragically killed in a road traffic accident. They were passengers in a vehicle driven by the first appellant, which had collided with the vehicle driven by the first respondent. The late Low Chin Wee left behind the third appellant, who claimed to be his wife whilst the late Low Sai Tiam left behind his wife, the fourth appellant, who was also the mother of the late Low Chin Wee. They, together with the first and second appellants, succeeded in suing the first respondent and his employer in the Sessions Court for general and special damages. The first respondent was found 100% liable for the accident and the Sessions Court Judge proceeded to make awards in favour of the third and fourth appellants. The fourth appellant's claim for loss of support occasioned by the deaths of her late husband and son was however disallowed. Dissatisfied with the decision, the respondents appealed to the High Court against the award of RM153,600 to the third appellant for loss of support. The fourth appellant, on her part, cross appealed against the dismissal of her claim for similar relief. The High Court Judge allowed the respondents' appeal against the third appellant and dismissed the fourth appellant's cross appeal. Hence, the present appeal by the third and fourth appellants. The issues that arose were (i) whether the third appellant was the lawful wife of the late Low Chin Wee and therefore entitled to loss of dependency claim under s. 7(2) of the Civil Law Act 1956 ('ÇLA'); and (ii) whether the fourth appellant was dependent on her deceased husband and son for her living prior to the accident.

Held (dismissing third and fourth appellants' appeal)
Per Abdul Rahman Sebli JCA delivering the judgment of the court:

(1) The late Low Chin Wee and the third appellant were husband and wife according to Chinese custom. The marriage was never registered under the Law Reform (Marriage and Divorce) Act 1976 ('the LRA'). After the coming into force of the LRA on 1 March 1982, all non-Muslim marriages for persons domiciled in Malaysia must be registered under the LRA. Section 34 of the LRA does not validate any unregistered marriage, customary or otherwise that was solemnised after 1 March 1982. (paras 14, 16 & 32)

(2) After the coming into force of the LRA, it is the LRA and not the CLA, or any statute of general application, nor any legal doctrine or custom that determined the legal status of a marriage between two non-Muslims. Therefore, the answer to the question who is a 'wife' under s. 7(2) of the CLA is in the LRA. The spirit of the LRA dictates that before a woman can be recognised as a wife, she must undergo a marriage that is solemnised in accordance with Part III of the LRA. That is a prerequisite for a woman to acquire the status of a wife (and a man the status of a husband) after the coming into force of the LRA. Having regard to the clarity of language used in s. 5(4) of the LRA, the provisions admits of only one construction, and that was, after 1 March 1982, all non-Muslim marriages must be solemnised in accordance with Part III of the LRA and not in accordance with any other marriage rites. (paras 40, 41 & 43)

(3) If a couple wishes to marry according to their own custom, the LRA does not stop them from doing so. But an unregistered ceremonial marriage such as the one entered into between the late Low Chin Wee and the third appellant clearly was not a marriage that was solemnised in accordance with Part III of the LRA. On the contrary, it was a marriage that would be in breach of statute, and being in breach of the law, the marriage would be null and void and would not confer on the bride the status of a 'wife' for the purpose of s. 7(2) of the CLA. Such a marriage although valid under one's personal or customary law was no marriage at all for the purposes of the LRA. Nothing can take away the fact that the third appellant was the lawfully wedded wife of the late Low Chin Wee under the Chinese customary marriage but by not registering the marriage under the LRA, it became void by operation of law. (paras 44, 45 & 53)

(4) The certificate for marriage, licence or statutory declaration referred to in s. 22(4) of the LRA means a certificate, licence or statutory declaration issued or delivered, as the case may be, pursuant to LRA, which *ex necessitate* involves prior registration of the marriage. Without such certificate or license having been issued or such statutory declaration having been delivered, the purported marriage 'shall be void'. (para 47)

(5) The fourth appellant was not dependent on her deceased husband and son for her living prior to the accident. Both the Sessions Court and the High Court had given sufficient consideration to the evidence presented by the fourth appellant before rejecting her claim for loss of support. This was clearly not a case where the finding was unsupported or was grossly against the weight of evidence. This court had gone through the evidence and grounds of judgments and found no appealable error on the part of both courts below that warranted appellate intervention. (paras 55-57)

Bahasa Malaysia *Headnotes*

Kedua-dua si mati, Low Sai Tiam dan Low Chin Wee, bapa dan anak lelaki, terbunuh dalam satu kemalangan jalan raya. Mereka adalah penumpang kenderaan yang dipandu oleh perayu pertama, yang bertembung dengan kenderaan yang dipandu oleh responden pertama. Si mati Low Chin Lee meninggalkan perayu ketiga, yang mendakwa bahawa dia adalah isteri kepada si mati, dan si mati Low Sai Tiam meninggalkan isterinya, perayu keempat, yang juga ibu kepada si mati Low Chin Wee. Mereka, bersama-sama dengan perayu pertama dan kedua, berjaya menyaman responden pertama dan majikannya di Mahkamah Sesyen untuk ganti rugi am dan khas. Responden pertama didapati 100% bertanggungjawab untuk kemalangan itu dan Hakim Mahkamah Sesyen memberikan award memihak kepada perayu ketiga dan keempat. Walau bagaimanapun, tuntutan perayu keempat untuk kehilangan saraan disebabkan kematian suami dan anaknya ditolak. Tidak berpuas hati dengan keputusan tersebut, responden-responden merayu kepada Mahkamah Tinggi terhadap award RM153,600 yang diberikan kepada perayu ketiga untuk kehilangan saraan. Perayu keempat pula merayu balas terhadap penolakan tuntutannya untuk relif yang sama. Hakim Mahkamah Tinggi membenarkan rayuan responden-responden terhadap perayu ketiga dan menolak rayuan balas perayu keempat. Oleh itu, rayuan ini oleh perayu ketiga dan keempat. Isu-isu yang timbul adalah (i) sama ada perayu ketiga adalah isteri yang sah si mati Low Chin Wee dan berhak untuk tuntutan kehilangan saraan di bawah s. 7(2) Akta Undang-Undang Sivil 1956 ('CLA'); dan (ii) sama ada perayu keempat bergantung kepada arwah suaminya dan anaknya untuk kehidupannya sebelum kemalangan.

Diputuskan (menolak rayuan perayu ketiga dan keempat)
Oleh Abdul Rahman Sebli HMR menyampaikan penghakiman mahkamah:

(1) Si mati Low Chin Wee dan perayu ketiga adalah suami dan isteri mengikut adat Cina. Perkahwinan tersebut tidak didaftarkan di bawah Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('LRA'). Selepas LRA dikuatkuasakan pada 1 Mac 1982, semua perkahwinan yang melibatkan pihak-pihak bukan beragama Islam bagi mereka yang bermastautin di Malaysia harus didaftarkan di bawah LRA.

Seksyen 34 LRA tidak mengesahkan mana-mana perkahwinan yang tidak berdaftar, adat atau sebaliknya yang diakadnikahkan selepas 1 Mac 1982.

(2) Selepas penguatkuasaan LRA, LRA dan bukan CLA, atau mana-mana statut pemakaian am, dan juga mana-mana doktrin undang-undang atau adat, yang menentukan status undang-undang perkahwinan di antara dua pihak yang bukan beragama Islam. Oleh itu, jawapan kepada persoalan siapakah 'isteri' di bawah s. 7(2) CLA boleh didapati dalam LRA. Semangat LRA menetapkan bahawa sebelum seorang wanita diisytiharkan sebagai seorang isteri, dia harus menjalani perkahwinan yang diakadnikahkan mengikut Bahagian III LRA. Ini merupakan pra-syarat seorang wanita untuk memperoleh status isteri (dan lelaki memperoleh status suami) selepas penguatkuasaan LRA. Mengambil kira bahasa yang jelas dalam s. 5(4) LRA, peruntukan tersebut menerima hanya satu tafsiran, iaitu selepas 1 Mac 1982, semua perkahwinan yang melibatkan pihak-pihak bukan beragama Islam harus diakadnikahkan menurut Bahagian III LRA dan bukan mengikut mana-mana upacara perkahwinan lain.

(3) Jika satu pasangan ingin berkahwin menurut adat mereka sendiri, LRA tidak akan menghalang mereka daripada berbuat demikian. Tetapi upacara perkahwinan yang tidak didaftarkan seperti yang dimasuki oleh si mati Low Chin Wee dan perayu ketiga dengan jelasnya bukan perkahwinan yang diakadnikahkan menurut Bahagian III LRA. Sebaliknya, ia adalah perkahwinan yang melanggar statut, dan melanggar undang-undang, oleh itu perkahwinan adalah terbatal dan tidak sah dan tidak akan memberi status 'isteri' kepada pengantin perempuan bagi tujuan s. 7(2) CLA. Perkahwinan sebegitu walaupun sah di bawah undang-undang peribadi atau adat seseorang bukanlah satu perkahwinan bagi tujuan LRA. Memang tidak dinafikan bahawa perayu ketiga adalah isteri sah kepada si mati Low Chin Wee di bawah adat perkahwinan Cina tetapi dengan tidak mendaftarkan perkahwinan tersebut di bawah LRA, ia menjadi tidak sah mengikut undang-undang.

(4) Sijil perkahwinan, lesen atau akuan berkanun yang dirujuk dalam s. 22(4) LRA bermaksud sijil, lesen atau akuan berkanun yang dikeluarkan dan diserahkan mengikut kes yang berkenaan di bawah LRA, yang *ex necessitate* melibatkan pendaftaran sebelum perkahwinan. Tanpa sijil atau lesen dikeluarkan atau akuan berkanun diserahkan, perkahwinan tersebut 'adalah batal'.

(5) Perayu keempat tidak bergantung kepada arwah suaminya dan anaknya untuk kehidupannya sebelum kemalangan itu berlaku. Kedua-dua Mahkamah Sesyen dan Mahkamah Tinggi telah memberikan pertimbangan yang memadai kepada keterangan yang dikemukakan oleh perayu keempat sebelum menolak tuntutannya untuk kehilangan saraan.

Ini dengan jelasnya bukan kes di mana keputusan itu tidak disokong atau telah menentang keterangan yang sedia ada. Mahkamah ini telah meneliti keterangan dan alasan-alasan penghakiman dan tidak mendapati kekhilfan yang perlu dirayu dari kedua-dua mahkamah di bawah yang mewajarkan campur tangan rayuan.

Case(s) referred to:
Chai Siew Yin v. Leong Wee Shing [2004] 1 CLJ 752 CA ***(not foll)***
Chong Sin Sen v. Janaki Chellamuthu [1997] 2 CLJ 699 HC ***(not foll)***
Joremi Kimin & Anor v. Tan Sai Hong [2001] 1 CLJ 526 CA ***(not foll)***
Leong Wee Shing v. Chai Siew Yin [2000] 1 CLJ 439 HC ***(refd)***
PP v. Sihabduin Hj Salleh & Anor [1981] CLJ 39; [1981] CLJ (Rep) 82 FC ***(refd)***
Tan Sai Hong v. Joremi Kimin & Anor [1997] 5 CLJ 614 HC ***(refd)***
Tan Weng Chiang v. PP [1992] 4 CLJ 2094; [1992] 1 CLJ (Rep) 324 SC ***(refd)***
Wong Swee Chin v. PP [1980] 1 LNS 138 FC ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 7(1), (2)
Law Reform (Marriage and Divorce) Act 1976, ss. 3(3), (4), 4(1), (2), 5(4), 22(4), 24, 27, 34

For the appellants - Harpal Singh Grewal, Harjeet Singh Sidhu, Patwant Singh Sohanpal & Reny Rao; M/s PS Sohanpal & Sidhu
For the respondents - Reuben Netto, JS Naicker & Logananth Gunasagaram; M/s Naicker & Assocs
Amicus Curiae - Balwant Singh Sidhu & YN Foo; Malaysian Bar

[Editor's note: Appeal from High Court, Shah Alam; Civil Appeal No: 12B-330-08-2013 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Abdul Rahman Sebli JCA:

[1] The appeal by the third appellant raises a question of law of great general importance. The question is whether, after the coming into force of the Law Reform (Marriage and Divorce) Act 1976 ("the LRA") with effect from 1 March 1982, all marriages for persons domiciled in Malaysia must be registered under the LRA, and the legal effect of non-registration. The issue concerns the interplay between s. 34 of the LRA and s. 7(2) of the Civil Law Act 1956 ("the CLA").

[2] By virtue of s. 3(3) and (4) however, the LRA does not apply to Muslims and to any native of Sabah and Sarawak or any aborigine of West Malaysia whose marriage and divorce is governed by native customary law or aboriginal custom unless:

(a) He elects to marry under the LRA;

(b) He contracted his marriage under the Christian Marriage Ordinance (Sabah) (Cap 24); or

A (c) He contracted his marriage under the Church and Civil Marriage Ordinance (Sarawak) (Cap 92).

[3] As for the fourth appellant's appeal, the question is whether she is entitled to claim for the loss of support occasioned by the deaths of her husband and son.

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[4] Having considered the submissions of both parties, including submissions from a representative of the Malaysian Bar who appeared as *amicus curiae*, we dismissed the third and fourth appellants' appeal by a unanimous decision. We now give the detailed reasons for our decision.

C **[5]** The facts giving rise to this appeal are as follows. On 11 December 2010, the deceased Low Sai Tiam and Low Chin Wee, who were father and son respectively, were tragically killed in a road traffic accident. They were passengers in a motor jeep driven by the first appellant, which had collided with the vehicle driven by the first respondent who was making a U-turn D without warning.

[6] The late Low Chin Wee left behind the third appellant, who claims to be his wife whilst the late Low Sai Tiam left behind his wife the fourth appellant, who is also the mother of the late Low Chin Wee. They, together with the first and second appellants, sued the first respondent and his E employer in the Sessions Court for general and special damages and succeeded.

[7] The first respondent was found 100% liable for the accident and the learned Sessions Court Judge proceeded to make the following awards in favour of the third and fourth appellants:

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The third appellant

(i) RM153,600 for loss of support.

(ii) RM10,000 for bereavement.

G (iii) RM30,000 for funeral expenses.

The fourth appellant

(i) RM10,000 for bereavement.

(ii) RM30,000 for funeral expenses.

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[8] The fourth appellant's claim for loss of support occasioned by the deaths of her husband the late Low Sai Tiam and her son the late Low Chin Wee was however disallowed.

[9] Dissatisfied with the decision, the respondents appealed to the High I Court but only against the award of RM153,600 to the third appellant for loss of support. The fourth appellant on her part cross-appealed against the dismissal of her claim for similar relief.

[10] Having heard arguments, the learned High Court Judge allowed the respondents' appeal against the third appellant and dismissed the fourth appellant's cross-appeal. Hence the present appeal by the third and fourth appellants. The appeal does not concern the first and second appellants.

[11] We shall first deal with the appeal by the third appellant. The question that calls for consideration is whether she is the lawful wife of the late Low Chin Wee and therefore entitled to loss of dependency claim under s. 7(2) of the CLA. Sub-sections (1) and (2) of s. 7 are to be read together and are couched in the following language:

> (1) Whenever the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action in damages, notwithstanding the death of the person injured, and although the death has not been caused under such circumstances as amount in law to an offence under the Penal Code.
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> (2) Every such action shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death has been caused and shall be brought by and in the name of the executor of the person deceased.

[12] Section 34 of the LRA on the other hand provides as follows:

> Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.

[13] The learned Sessions Court Judge after a full trial of the action came to a finding that the late Low Chin Wee and the third appellant were husband and wife by Chinese customary marriage. This finding was however reversed by the High Court on the ground that there was no expert evidence to prove that the late Low Chin Wee and the third appellant had indeed undergone a Chinese customary marriage.

[14] We have gone through the record of appeal and the submissions of the parties carefully and we do not find any valid reason for the learned High Court Judge to disturb the finding of fact made by the learned Sessions Court Judge. The testimony of the third appellant that she and the late Low Chin Wee were married according Chinese custom was not challenged at all in cross-examination. The evidence is therefore deemed to be admitted: *Wong Swee Chin v. PP* [1980] 1 LNS 138; [1981] 1 MLJ 212. It was therefore wrong for the learned judge to have come to his own finding that the third appellant's customary marriage with the late Low Chin Wee was not proved.

[15] In the circumstances we restore the finding of the learned Sessions Court Judge that the late Low Chin Wee and the third appellant were husband and wife according to Chinese custom.

[16] The undisputed fact, however, is that the marriage was never registered under the LRA. This is the crux of the matter – whether the marriage has been rendered void by such failure to register. The learned Sessions Court Judge was of the view that the non-registration did not render the marriage invalid and accordingly ruled that the third appellant was the wife of the late Low Chin Wee within the meaning of s. 7(2) of the CLA.

[17] In holding the view that he did, it is obvious that the learned Sessions Court Judge was guided by the decision of this court in *Joremi Kimin & Anor v. Tan Sai Hong* [2001] 1 CLJ 526; [2001] AMR 675 where it was held that a spouse from a customary marriage falls within the definition of "wife" under the CLA. In that case both the High Court and this court relied on s. 34 of the LRA as a saving provision to recognise the wife of a customary marriage as a dependent of the deceased husband.

[18] At the High Court stage of the case, Abdul Malik Ishak J (as he then was) in a judgment reported in *Tan Sai Hong v. Joremi Kimin & Anor* [1997] 5 CLJ 614; [1998] AMR 522 gave the following reasons for validating the unregistered marriage between the plaintiff and the deceased:

> What kind of connotation must one give to the word "wife"? Who is a "wife" under s. 7(2) of the Civil Law Act? Section 7(2) of the Civil Law Act merely says, *inter alia*, that an action shall be brought for the benefit of the wife. It does not seek to differentiate nor make a distinction between a lawful wife and unlawful wife. It is instructive to note that the Civil Law Act and the Law Reform (Marriage and Divorce) Act 1976 was promulgated to provide and protect monogamous marriages. Here, there was no evidence at all that the defendant had other wives other than the plaintiff. They both lived as far as the evidence goes harmoniously as husband and wife and they had three children out of that union. Madam J. Chandrika rightly pointed out that it would be a terrible injustice and against public policy to rule on the status of the deceased's marriage after his death. S. 34 of the Law Reform (Marriage and Divorce) Act 1976 sets out the effect of registration this way:
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> > Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.
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> It appears that s. 34 of the Law Reform (Marriage and Divorce) Act 1976 saves the day for the plaintiff. In my judgment that Chinese customary marriage between the plaintiff and the deceased was valid and it was not registered. As a saving clause, s. 34 of the Law Reform (Marriage and Divorce) Act 1976 sure comes in handy for those people who contracted Chinese customary marriages. Incidentally, this very section was not raised nor ventilated in *T v. O* and had that section been applied the outcome might have been different.

[19] In affirming the High Court decision, this court through Haidar Mohd Noor JCA (as he then was) who delivered the unanimous decision of the Court held that the customary marriage between the respondent and the deceased was valid, as registration was "merely a formality". A

[20] In other words, since the marriage was valid according to Chinese custom, the fact that it was not registered did not render it invalid, notwithstanding s. 27 of the LRA which provides for compulsory registration after the coming into force of the LRA. This provision is important in the entire scheme of things and is reproduced below for ease of reference: B

> 27. Registration
>
> The marriage of any person ordinarily resident in Malaysia and of every person resident abroad who is a citizen of or domiciled in Malaysia after the appointed date **shall be registered pursuant to this Act**.
>
> (emphasis added)

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[21] As for the meaning to be ascribed to the word "wife" in s. 7(2) of the CLA, the court endorsed and adopted the following observations by Mohd Ghazali J (as he then was) in *Chong Sin Sen v. Janaki Chellamuthu* [1997] 2 CLJ 699 at p. 706: D

> As quite rightly submitted by counsel for the respondent, the word 'wife' is not defined in the Civil Law Act. Counsel for the appellant has argued that after the date of coming into operation of the 1976 Act, a marriage contracted in contravention of the provisions of the Act shall be void. Section 9 which is found under Part III of the 1976 Act provides that a marriage under the Act may be solemnised only by the Registrar and section 22(4) provides every marriage purported to be solemnised in Malaysia shall be void unless a certificate for marriage or a licence has been issued by the Registrar or Chief Minister or a statutory declaration under sub-s (3) has been delivered to the Registrar or Assistant Registrar as the case may be. Section 5(4) provides that after the date of coming into operation of the Act, no marriage under any law, religion, custom or usage may be solemnised except as provided in Part III. On the face of it, it would seem that the customary marriage underwent by the respondent and the deceased, as far as the 1976 Act is concerned, would be void - they had only contracted a customary marriage after the date of coming into operation of the 1976 Act and there is no evidence to show that it was solemnised pursuant to the provisions of the 1976 Act, neither has the respondent furnished a copy of the certificate of marriage issued pursuant to the Act. Since the respondent's marriage to the deceased would seem to be void pursuant to the provisions of the 1976 Act, does that preclude her from bringing an action under ss. 7 and 8 of the Civil Law Act? In other words, is the respondent a 'wife' within the contemplation of s. 7(2) of the Civil Law Act?
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> In my opinion, since the legislature has seen it fit not to define what is meant by a 'wife' in the Civil Law Act, and unless there be something in the context to the contrary, I would think that that word should be read as applicable to those things to which they would in their natural sense

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A apply. I cannot find anything in the Civil Law Act which provides that the term 'wife' as found in s. 7(2) should be confined to a woman who is a party to a marriage solemnised and/or registered under any prevailing Act relating to marriages and divorce. That being the case, I would think that it is for the court to interpret that word as found in the Civil Law Act as best it may.

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In the instant case, I would decline to consider the provisions of the 1976 Act which to me is a statute which proceeds on different lines and includes different provisions which deals with a different subject matter. The preamble to the 1976 Act reads:

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> An Act to provide for monogamous marriages and the solemnisation and registration of such marriages; to amend and consolidate the law relating to divorce; and to provide for matters incidental thereto.

I am unable to see how it ought to have any influence upon the question which I have to decide, i.e. whether the respondent falls within the
D contemplation of the word 'wife' found in s. 7(2) of the Civil Law Act. I do not think that I should speculate on what the intention of the legislature was with regard to s. 7(2), i.e. as to whether such a term should only be restricted to a 'married woman' who has undergone a marriage solemnised and registered in accordance with the prevailing Act relating to marriages.

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What the legislature intended to be or not to be done can only be ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication. In my opinion, I do not think that the word 'wife' found in s. 7(2) of the Civil Law Act should be restricted to a woman whose marriage has been solemnised and registered
F pursuant to the provisions of any prevailing Act relating to marriage and divorce. The Married Women Act 1957 provides that a 'married woman' includes any woman who has undergone a customary marriage - to me, such a 'married woman' would fall within the contemplation of the word 'wife' as found in s. 7(2) of the Civil Law Act - and the Act also provides that she shall be capable of suing in tort and shall be entitled to all
G remedies and redress for all purposes. In the instant case it is my view that the respondent, having undergone a customary marriage with the deceased, is a 'wife' and hence had *locus standi* to bring this action on behalf of the deceased's estate and that being so, I dismissed the appeal with costs.

H **[22]** Of particular interest to us in the above judgment of Mohd Ghazali J is that although he acknowledged that the respondent's marriage to the deceased "would seem to be void" under the LRA, he declined to consider the provisions of the LRA on the ground that it is a statute "which proceeds on different lines and includes different provisions which deals with a
I different subject matter." Consequently he did not consider the question of whether the marriage must be registered under the LRA before it could be recognised as a valid marriage.

[23] Section 34 of the LRA came again for consideration before this court in *Chai Siew Yin v. Leong Wee Shing* [2004] 1 CLJ 752. Briefly the facts are these. The plaintiff Leong Wee Shing claimed that she was married to the deceased Lau Yen Yoon by way of customary marriage on 19 November 1995, ie post-LRA. The deceased was killed in a road accident on 7 March 1999. She claimed that as the wife of the deceased, she was entitled to all assets acquired by the deceased during his lifetime.

[24] The mother of the deceased refuted her claim and *inter alia* alleged that there was no customary marriage between the plaintiff and the deceased. In the alternative she alleged that the customary marriage between her deceased son and the plaintiff was not registered and thus void for non-registration.

[25] At the High Court, RK Nathan J in *Leong Wee Shing v. Chai Siew Yin* [2000] 1 CLJ 439; [2000] 5 MLJ 162 found for the plaintiff and declared her marriage to the deceased to be valid, principally on the ground that a Chinese customary marriage had taken place between the plaintiff and the deceased, and that although it was not registered, s. 34 of the LRA "validated" it. This is how the learned judge sought to legitimise the marriage:

> It is not in dispute that the appointed date referred to in the said search is 1 March 1982. To my mind the defendant's submission ignores the provision of s. 34 of the Act. The said section reads as follows:
>
> > 34. Legal effect of registration.
> > Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.
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> The object of the Act was to regulate or regularise aspects of marriage and divorce of non-Muslims in the country. This was the spirit and intent of the Act. Surely therefore it cannot be the intention of Parliament that all marriages that had occurred before 1 March 1982 and not registered, ought to be held void and not recognised as valid. The serious consequences of such an interpretation would be mind boggling. For example, such an interpretation would have the effect of bastardising issues, and causing disarray upon inheritance. It is to avert such a catastrophe that s. 34 was introduced. This has the effect of validating such marriages that were not registered before 1 March 1982. Therefore now all marriages are valid. The only issue that the defendant can possibly raise is, was there a valid marriage in this case. If there is a valid marriage then clearly s. 34 of the Act would validate this marriage.

[26] The decision was affirmed by this court in a unanimous decision and judgment was delivered by Gopal Sri Ram JCA (as he then was), who ruled:

> That leaves the question of law. The argument is that the respondent's customary marriage in question is void for want of registration under the Law Reform (Marriage and Divorce) Act 1976 ("the Act"). The learned judge rejected - and in our view rightly rejected - that argument. It is plain that the fallacy of the appellant's argument lies in its oversight of the object and purpose of the Act.

A The main purpose of the Act is to prohibit polygamous marriages among non-Muslims. This is made clear in s. 5 of the Act. It is to achieve this object that the Act requires the registration of non-Muslim marriages. But nowhere in the Act is provision made declaring as void any marriage contracted between non-Muslims in accordance with the ceremonial rites of the community to which they belong. And Parliament has taken pains B to make that abundantly clear in s. 34 of the Act. The judge quoted it. He relied on it. This is what it says:

> Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having C been registered.

The marginal note reads "Legal effect of registration". It indicates what s. 34 is all about. Can we use it to interpret the section? I think we can.

Now, it is true that at one time it was taboo to use a marginal note as an aid when interpreting a statutory provision. If you look at the old cases; D and even those decided in the 1960's; you will see a refusal by judges to rely on the marginal note to a section as an aid to interpretation. See, for example, *Claydon v. Green* [1868] LR 3 CP 511. So, in *Parson's v. B.N.M. Laboratories* [1964] 1 QB 95, Harman LJ said:

> I must, however, here say that I have always been brought up to E believe that to interpret an Act of Parliament by the side-notes to the sections is quite inadmissible although there are judicial pronouncements seeming to show that judges have not always refrained, as in my judgment they should, from giving some weight to them.

F But the modern approach is far more liberal. It is exemplified by what Augustine Paul JC said in *Ganesan v. Setiausaha Suruhanjaya Pasukan Polis* [1997] 1 LNS 227; [1998] 1 MLJ 240 which I consider to be the correct statement of the law:

> A marginal note to a section is part of the statute. It may be considered in construing the section or any other provision of the G statute, provided due account is taken of the fact that its function is merely to serve as a brief guide to the contents of the section (see *Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35; *Sithambaran v. Attorney General* [1972] 2 MLJ 175; *Re Tan Keng Tin & Re Chop Soon Bee* [1932] MLJ 134).

H Returning to the present instance, the marginal note to s. 34 of the Act confirms beyond doubt what the section says. To paraphrase the section, it says that a marriage that is otherwise valid is not invalid merely because it has not been registered under the Act. That is the result which is produced when the section is read as follows:

I > Nothing in this Act or the rules made thereunder shall be construed to render ... invalid any marriage which otherwise is valid merely by reason of its ... not having been registered.

> This is the way in which, I think, that section should be read if it is to make any sense. And that is the way in which, I think, that Parliament intended it to be read.
>
> At the end of the day, a marriage is a contract; *albeit* a very special type of contract; and if it is Parliament's intention to strike it down for want of registration I would expect very clear language to that effect in the Act. For, the result would be to legitimise the issue of non-registered customary marriages. This would produce a harsh and unjust result. And as Raja Azlan Shah J (as he then was) said in *Pesurohjaya Ibu Kota Kuala Lumpur v. Public Trustee & Ors* [1971] 1 LNS 104; [1971] 2 MLJ 30: "The presumption is that the legislature does not intend what is unjust." However, as it happens, in the present case, Parliament has expressly said that non-registration is not to have any effect on an otherwise valid marriage.

[27] We pause here to note that up to that point, *Joremi Kimin* and *Chai Siew Yin* represented the position of the law on s. 34 of the LRA read in conjunction with s. 7(2) of the CLA. The law as it stood then was that so long as the marriage contracted by the parties was valid according to the ceremonial rites of the community to which they belonged, non-registration did not render the marriage invalid.

[28] The authoritative force of these two decisions was however nullified when the Federal Court reversed *Chai Siew Yin* in Civil Appeal No. 2-10-2003(W). In a brief unreported oral judgment delivered by Pajan Singh Gill FCJ on 29 January 2004, this is what the Federal Court decided:

> Having heard the detailed arguments and having considered the relevant provisions of the Law Reform (Marriage and Divorce) Act 1976 and in the circumstances of this case, we are unanimous in our decision that this appeal be allowed.
>
> We are not in agreement with the reasoning of the judgments both in the High Court and the Court of Appeal.
>
> Section 34 of the said Act should not be read in isolation, but in harmony with the other provisions of the Act which encapsulate the overall intention of the Legislature in enacting the Act. To do otherwise would defeat the purpose and intention of the Act which was enacted to 'provide for monogamous marriages and the solemnisation and registration of such marriages.

[29] We believe it has not escaped attention that in paras. 18, 21, 25 and 26 above, we have quoted *in extenso* the pronouncements of Abdul Malik Ishak J, Mohd Ghazali J (as adopted by this court), RK Nathan J and Gopal Sri Ram JCA in the course of delivering their respective judgments.

[30] We did so for two reasons. One, to provide context to the oral judgment of the Federal Court in *Chai Siew Yin* and second, to show that the point of law raised in the present appeal had already been ventilated right up to the Federal Court. We are not aware of any later decision of the Federal Court that decided the point differently.

[31] The oral grounds of decision delivered by Pajan Singh Gill FCJ may be brief but there is no room for argument that the effect of the judgment is to completely overturn this court's decisions in *Joremi Kimin* and *Chai Siew Yin* on the proper construction to be given to s. 34 of the LRA *vis-à-vis* s. 7(2) of the CLA. In the light of this decision of the Federal Court, it is perplexing that an attempt is now being made to resurrect an issue that has been put to rest some 12 years ago.

[32] Clearly the apex court decision binds this court, the High Court and the Sessions Court by the doctrine of *stare decisis*. It provides in our view a complete answer to the question of law for our determination. Thus, after the coming into force of the LRA on 1 March 1982, all non-Muslim marriages for persons domiciled in Malaysia must be registered under the LRA. Section 34 does not validate any unregistered marriage, customary or otherwise that is solemnised after 1 March 1982.

[33] Non-Muslims who enter into customary marriages after the appointed date must be mindful of the dire consequences of non-registration. They must understand that failure to register their marriages will have far-reaching implications on their marital status and rights under the law. The situation that the third appellant has found herself in, wittingly or unwittingly, should serve as a reminder to those who contemplate going through the treacherous path of unregistered marriage.

[34] Learned counsel for the appellants argued that the Federal Court decision in *Chai Siew Yin* is irrelevant and has no application to the facts of the present case as it was a decision on a claim under the law of succession and not a decision on s. 7(2) of the CLA. With due respect to counsel, the argument is futile.

[35] Although the Federal Court did not touch on s. 7(2) of the CLA, by setting aside the *dictum* of the High Court on s. 34 of the LRA which this court affirmed, it had effectively decided that registration is a mandatory requirement in order to constitute a valid marriage. The Federal Court made it clear that it did not agree with the reasoning of the judgments of both RK Nathan J in the High Court and Gopal Sri Ram JCA in the Court of Appeal.

[36] As only a validly solemnised marriage will make a woman a wife, an invalid marriage will not. *Joremi Kimin* and *Chai Siew Yin* are no longer good law for the provision s. 34 of the LRA validates any unregistered customary marriage that is solemnised after the coming into force of the LRA.

[37] Despite the brevity of the Federal Court judgment in *Chai Siew Yin*, the *ratio decidendi* of the case is unmistakably clear, that for any marriage to be valid after the appointed date, it must be registered under the LRA, for in the words of Pajan Singh Gill FCJ, "To do otherwise would defeat the purpose and intention of the Act which was enacted to 'provide for monogamous marriages and the solemnisation and registration of such marriages'.

[38] The three cases of *Joremi Kimin*, *Chong Sin Sen* and *Chai Siew Yin* demonstrate how ambiguous the word "wife" in s. 7(2) of the CLA is in its application to s. 27 of the LRA, which requires for all non-Muslim marriages to be registered after the coming into force of the LRA. We do not think however that this presents undue difficulty. In construing the word, it must not be confined to the CLA or by simply giving the word its ordinary, popular or dictionary meaning.

[39] It must be construed in the context and within the framework of the LRA, which is a special statute specially promulgated by Parliament for the specific purpose of regulating marriage and divorce among non-Muslims in the country, which the CLA is not. It calls for a purposive approach of statutory interpretation.

[40] After the coming into force of the LRA, it is the LRA and not the CLA, the Married Women Act 1957 or any statute of general application, nor any legal doctrine or custom that determines the legal status of a marriage between two non-Muslims. It is therefore in the LRA and not elsewhere that we should look for the answer to the question who is a "wife" under s. 7(2) of the CLA.

[41] The spirit of the LRA dictates that before a woman can be recognised as a wife, she must undergo a marriage that is solemnised in accordance with Part III of the LRA. That is a prerequisite for a woman to acquire the status of a wife (and a man the status of a husband) after the coming into force of the LRA. The argument that the LRA does not make registration compulsory flies in the face of s. 5(4) which reads:

> After the appointed date, no marriage under any law, religion, custom, or usage may be solemnised except as provided in Part III.

[42] The provision is clear and unambiguous and must be given its natural and ordinary meaning. It is not for us to invent fancy ambiguities as an excuse not to give effect to its plain meaning or twist and stretch the language beyond common sense: *PP v. Sihabduin Hj Salleh & Anor* [1981] CLJ 39; [1981] CLJ (Rep) 82; [1981] CLJ (Rep) 82; *Tan Weng Chiang v. PP* [1992] 4 CLJ 2094; [1992] 1 CLJ (Rep) 324; *Cheong Seok Leng v. PP* [1998] 1 LNS 39. Our duty is to give effect to the object of the provision, not to defeat it.

[43] Having regard to the clarity of language used in s. 5(4), we are clear in our minds that the provision admits of only one construction, and that is, after 1 March 1982, all non-Muslim marriages must be solemnised in accordance with Part III of the LRA and not in accordance with any other marriage rites, except those covered by s. 3(4). Any proposition to the contrary will rock the whole foundation of the Act, whose object in pith and substance is to regulate the solemnisation and registration of monogamous marriages.

[44] If a couple wishes to marry according to their own custom, the LRA does not stop them from doing so. In fact s. 24 facilitates the solemnisation of such marriage. But an unregistered ceremonial marriage such as the one entered into between the late Low Chin Wee and the third appellant clearly is not a marriage that is solemnised in accordance with Part III of the LRA.

[45] On the contrary, it is a marriage that will be in breach of statute, and being in breach of the law, the marriage will be null and void and will not confer on the bride the status of a "wife" for the purpose of s. 7(2) of the CLA. Such marriage although valid under one's personal or customary law is no marriage at all for purposes of the LRA.

[46] If s. 5(4) is still unclear as to the legal status of such marriage, s. 22(4) removes all doubt. It provides as follows:

> (4) Every marriage purported to be solemnised in Malaysia **shall be void** unless a certificate for marriage or a licence has been issued by the Registrar or Chief Minister or a statutory declaration under subsection (3) has been delivered to the Registrar or Assistant Registrar, as the case may be.
>
> (emphasis added)

[47] The certificate for marriage, licence or statutory declaration referred to in s. 22(4) above means a certificate, licence or statutory declaration issued or delivered as the case may be pursuant to the LRA, which *ex necessitate* involves prior registration of the marriage. Without such certificate or licence having been issued or such statutory declaration having been delivered, the purported marriage "shall be void".

[48] This is where, with the greatest of respect, we think Gopal Sri Ram JCA fell into error when he said in *Chai Siew Yin* (see para. 26 above) that "nowhere in the Act is provision made declaring as void any marriage contracted between non-Muslims in accordance with the ceremonial rites of the community to which they belong." Contrary to what the learned judge said, the effect of ss. 5(4) and 22(4) of the LRA is that such customary marriage, being solemnised after the appointed date, will be void for want of registration.

[49] Marriages that are exempted from registration are marriages that were solemnised prior to the appointed date, ie before 1 March 1982 and not after. This is clear from s. 4(1) which stipulates:

> (1) Nothing in this Act shall affect the validity of any marriage solemnised under any law, religion, custom or usage prior to the appointed date.

[50] The reason why such marriages are exempted from registration is because under s. 4(2) they are deemed to be registered. Being deemed to be registered means the marriages are valid although unregistered. This is how s. 4(2) validates such marriages:

> (2) Such marriage, if valid under the law, religion, custom or usage under which it was solemnised, shall be deemed to be registered under this Act.

[51] The truth is, Parliament never intended to invalidate valid but unregistered marriages that were solemnised before the coming into force of the LRA. Such marriages are valid not because of s. 34 but because of s. 4(1) and (2). Seen from this perspective, s. 34 is a surplusage in that it purports to validate marriages that are already deemed to be valid.

[52] Section 4(2) reflects the importance placed by the Legislature on the need for all non-Muslim marriages to be registered after the appointed date. There was no need for Parliament to enact such deeming provision if registration was not intended to be compulsory after the coming into force of the LRA. That would be to legislate in vain. The existence of s. 4(2) of the LRA fortifies the argument that registration is a must after 1 March 1982.

[53] In all sympathy to the third appellant, we must say this in our concluding remark. Nothing can take away the fact that she is the lawfully wedded wife of the late Low Chin Wee under Chinese customary marriage but by not registering the marriage under the LRA, it has become void by operation of law.

[54] That wraps up our deliberation on the appeal by the third appellant. We shall now deal with the appeal by the fourth appellant. Her grievance is that both the Sessions Court and the High Court were wrong in disallowing her claim for loss of support occasioned by the deaths of her late husband and son.

[55] We have gone through the evidence, the grounds of judgments and the submissions of both sides carefully and we do not find any appealable error on the part of both courts below that warrants appellate intervention.

[56] It is clear to us that on the evidence before him, the learned Sessions Court Judge was perfectly entitled to make those findings of fact and the learned High Court Judge was right in not interfering with those findings, in particular the finding by the learned Sessions Court Judge that the fourth appellant was not dependent on her deceased husband and son for her living prior to the accident.

[57] From the grounds of judgments it is clear that both courts below had given sufficient consideration to the evidence presented by the fourth appellant before rejecting her claim for loss of support. This is clearly not a case where the finding is unsupported by or is grossly against the weight of evidence.

[58] In the final analysis the fourth appellant's appeal is against findings of fact which no doubt involved the question of the credibility of the witnesses. An appellate court will not interfere willy-nilly with such findings. It is only where a finding is plainly wrong that the appellate court will interfere. For this reason, the fourth appellant's appeal was also dismissed with costs.